

# MONTANA MEDICAL LEGAL PANEL

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## MONTANA MEDICAL LEGAL PANEL INFORMATION GUIDE

**1. INTRODUCTION:** The Montana Medical Legal Panel (MMLP/Panel) was enacted into law effective April 19, 1977, with the strong support of the Montana Medical Association, Montana Hospital Association and the State Bar of Montana. Before 1977 medical malpractice suits were often filed unnecessarily. There was also a complete absence of data about malpractice incidents in Montana, which is relevant to risk prevention and the quality of health care delivery. After enacting the MMLP Rules of Procedure, approved by the Montana Supreme Court, the Panel administrative office began processing claims in 1978. Jurisdiction of the Panel was extended to Long Term Care Facilities in 1980; Dentists were added to the Panel in 1987 and Podiatrists in 1997. The Panel has always been funded solely by assessments levied on health care providers and is audited annually by the State Legislative Audit Committee.

The Montana Medical Legal Panel Rules of Procedure can be viewed online at:

[www.montanamedicallegalpanel.org](http://www.montanamedicallegalpanel.org).

**2. PURPOSE OF THE PANEL:** Rule 3 of the MMLP Rules of Procedure states:  
“The purpose of the Panel is to prevent, where possible, the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.”

**3. PANEL COMPOSITION:** Six panel members are selected to review each claim: three attorneys (one designated as Chairperson) and three health care providers generally from the same specialty as the named health care providers. However, under certain circumstances parties may stipulate to a different composition of panel members.

**4. ROLE OF PANEL MEMBERS:** A Panel Member must be impartial and be prepared to hear the case by reviewing the materials provided prior to hearing. Claim materials will arrive approximately one month prior to the date set for hearing on a CD and will be password protected. *You must call the MMLP at (406) 443-1110 during office hours (8:00 a.m. – 5:00 p.m. M-F) to obtain your password.* Please note all records referred to at the hearing will be projected on a screen for everyone to view. Panel members should keep record of the time spent reviewing claim materials. Expense Reimbursement Request forms will be distributed at the hearing. Be certain to bring all claim materials with you as everything will be collected and secured by MMLP staff when the hearing has concluded.

**5. ROLE OF A PANEL CHAIRPERSON:** The Chairperson may occasionally be required to make a ruling if the parties are unable to agree on a matter. The Chairperson may consult with the MMLP Director for guidance if an Order is to be drafted. A Panel hearing is an important process for all parties but is an informal proceeding. During a Panel hearing there are no set procedural or evidentiary rules, unlike a jury trial where there are both rules of procedure and evidence. The goal is to allow both sides to present their case. There is no transcript of the proceeding unless the parties stipulate to the contrary. The process calls for a great deal of good judgment by the Chairperson.

**6. PREHEARING TELEPHONE CONFERENCE:** No less than fourteen (14) days prior to the date set for hearing the Director, the Panel Chairperson and the parties (either through their legal counsel or on their own behalf if appearing on a pro se basis) will conduct a prehearing telephone conference where the following issues are discussed:

- A. Simplification and identification of issues;
- B. Obtain admissions to or stipulations of facts not remaining in dispute and the authenticity of documents;
- C. Limitation of the number of witnesses to be called and scheduling of their appearances;
- D. Estimation of length of hearing and, if applicable, consideration of any transcript request;
- E. Any other matter that might aid in expeditious consideration and determination of the claim.
- F. Any exhibits to be submitted by the parties.

**7. HEARING PROCEDURE:** MMLP hearings are confidential, informal and provide a screening process with an advisory opinion. The hearings start at 10:00 a.m. and typically last approximately three hours. Unless there are special needs which must be met for anyone attending the hearing, once started the hearings run continuously without taking a break for lunch except for short stretch breaks as needed. If a hearing is going to be longer than three hours the Panel members, the parties and their attorneys shall decide whether to take a break for lunch or have lunched ordered in.

**8. INTRODUCTIONS AT THE BEGINNING OF THE HEARING:** It is important that everyone in the hearing room know who everyone else is. The Panel members, the parties, and their attorneys, are provided with a one-page listing of the names and city of residence of each participant. However, at the very outset of the Hearing the Chairperson should introduce him/herself followed by the other Panel members introducing themselves. After the introduction of the Panel members the Chairperson should ask everyone to introduce themselves or ask the attorneys to introduce themselves and their clients.

**9. OPENING STATEMENTS:** Following the introductions the claimant has the opportunity to make an opening statement or to waive the opening statement. Following the claimant's opening statement the health care provider can make an opening statement or reserve it until the claimant has presented claimant's evidence and then make the opening statement.

The opening statement in a Panel Hearing is different than an opening statement made in a jury trial. Panel opening statements are typically more of a combination of opening statement/closing argument for the attorneys to explain their case in as much detail as they choose. Because a Panel Hearing is an informal and relatively brief process, the parties oftentimes make lengthy opening statements in which they refer to selected portions of the medical record, anatomical illustrations, medical literature, reports of experts, etc., and in the process try to explain how all of that adds up to a favorable result for their client. Such an opening statement/closing argument is usually helpful because at the end of those statements everyone should have a good idea of what each party is claiming.

Following the opening statements, and before witness testimony is presented, the Chairperson will administer an oath to each witness who will be testifying. The oath to be given is: "Do you promise to tell the truth and nothing but the truth in your testimony in this case?"

**10. CLAIMANT'S TESTIMONY - DIRECT EXAMINATION:** After the opening statement, the testimony of the claimant, and any other witnesses called by the claimant, will be presented in a question and answer format. Unlike a jury trial where the witness takes the witness stand, at a Panel hearing the witnesses remain seated at their table and the questioning is done in that fashion. The testimony of the Panel hearing is not

subject to the Rules of Evidence and the Chairperson needs to exercise a good deal of discretion before deciding to exclude any testimony.

**11. CLAIMANT'S TESTIMONY - CROSS EXAMINATION BY THE OPPOSING PARTY:** After the direct-examination of each witness called by the claimant, counsel for the health care provider may ask cross-examination questions.

**12. CLAIMANT'S TESTIMONY - QUESTIONS BY THE PANEL MEMBERS:** After each witness has offered direct examination, and has been asked the cross examination questions by the health care provider, the Panel members may ask questions of the witnesses.

**13. CLAIMANT'S TESTIMONY - REDIRECT AND RECROSS EXAMINATION:** After questioned by the Panel members, further questions may be asked of the claimant or other witnesses called by the claimant, followed by further cross examination questions by the health care provider and also by the Panel members. Once the claimant has presented all of the claimant's evidence the claimant will advise the Chairperson that they have concluded their case.

**14. HEALTH CARE PROVIDER'S TESTIMONY - DIRECT EXAMINATION---CROSS EXAMINATION---AND QUESTIONS BY THE PANEL:** After the claimant's testimony has been concluded the health care provider will present their testimony which will then be subject to cross examination by the claimant and questions by the Panel members in the same manner as outlined above for evidence presented by the claimant.

**15. EXHIBITS:** All exhibits must be identified during the prehearing telephone conference call and are to be submitted to the MMLP and exchanged between the parties two weeks prior to the date set for hearing, unless a different timeline is stipulated to at the time of the call. The MMLP will provide copies to the Panel members. Any other exhibits offered by a party, which were not identified at the prehearing teleconference and exchanged by the parties, shall not be admitted unless by agreement of the parties at the hearing.

**16. OBJECTIONS MADE DURING PANEL HEARING:** Any party may make objections during the Panel hearing and those must be ruled on by the Chairperson. In doing so, the Chairperson should keep in mind that the Panel hearing is not subject to the Rules of Evidence and exercise good judgment in terms of what seems to be fair and reasonable under the circumstances.

**17. CLOSING ARGUMENTS:** After the parties have submitted their evidence, closing arguments may be made by the parties if they choose to do so but should be kept short, as the Panel members will have heard the presentations by both claimant and health care providers and will have a good understanding of the case. Therefore, any closing arguments should be in summary form rather than a detailed review and recitation of all of the evidence that has been presented, as might be done in a jury trial. Parties and their attorneys need to keep in mind that following the presentation of all the evidence in the claim, the Panel members stay and deliberate, where the parties must leave the hearing room. Also, unlike a jury trial where the plaintiff argues, followed by the defendant arguing and then the plaintiff has a rebuttal argument, at the Panel hearing the claimant will first argue and that will be followed by the health care provider's closing argument and that will end the closing arguments.

**18. CLOSING PROCEDURE:** Once the closing arguments are finished the Chairperson will advise the parties that the Panel will now deliberate. The parties and their attorneys are then excused and must leave the hearing room. To learn of the Panel's decision, the parties may call the Medical Legal Panel office rather than asking or talking to any of the Panel members. None of the Panel members should be placed in a position where they are asked to engage in conversations with any of the parties or their attorneys. Upon request the Decision may be emailed to the parties the same day as the hearing, or if time does not permit, the following work day.

**19. PANEL DELIBERATIONS AND THE PANEL BALLOTS:** Following the Panel members' deliberations each member will complete their ballot. In that respect: (a) how each Panel member votes is confidential and does not need to be shared with any other Panel members; (b) the ballots are not to be signed by any member; (c) any member voting "no" on the first question, that is voting that there was not a violation of the accepted standard of care by the health care provider, does not need to vote on the second question, that is the question of damages; (d) the Panel members may, but are not required to, write any comments on their ballot which they feel are appropriate; (e) at the hearing the primary emphasis is on the question of standard of care. It is the claimant's responsibility also to present "some evidence" on the question of damages. However, that evidence can be short and summary in nature and does not need to be the kind of damage evidence that would be presented in a jury trial.

**20. QUESTIONS TO BE ANSWERED BY THE PANEL MEMBERS:** Upon consideration of all the relevant material presented and following the Panel members' deliberations, each member shall answer the following two questions by secret ballot.

**Question #1:** Is there substantial evidence\* such acts or omissions (claimed against the health care provider) constitute a departure from the accepted standards of health care?

**Question #2:** Is there is a reasonable probability that the patient was injured (as a result of the acts or omissions) thereby?

\*Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, or, stated another way, enough evidence to justify a refusal to direct a verdict on a factual issue in a jury trial.

The Chairperson shall tally votes for the Panel Decision. A copy of the Decision, along with any ballot comments, shall be mailed to the parties and their attorneys by the office of the MMLP. The decision and reasoning for the decision of the Panel members is not admissible as evidence in any action subsequently brought in any court of law. Panelists and witnesses are immune from civil liability for all communications, findings, opinions and conclusion made in the course and scope of the duties prescribed by the Montana Medical Legal Panel Rules of Procedure. The Panel's decision is without administrative or judicial authority and is not binding on any party.

**21. THE PANEL CHAIRPERSON'S DUTIES ONCE THE DELIBERATIONS AND BALLOTS HAVE BEEN COMPLETED:** Following the Panel's deliberations, and the vote of each Panel member, the Panel Chairperson shall: (a) collect the Ballots; (b) tally the results to determine the decision and record that on a separate Decision form to be signed by the Panel Chairperson; (c) collect all exhibits and any other materials distributed for the Panel hearing; (d) call the Panel office at 443-1110 to have a MMLP staff member come to the hearing room to pick up the equipment and all of the materials; (e) if a hearing is held outside of Helena or by another means, all claim materials must be returned to the MMLP office at 2021 11<sup>th</sup> Avenue, Helena, MT, 59601.

**22. REIMBURSEMENT:** Panel Members are provided with a MMLP Expense Reimbursement Request form at the hearing. Preparation for the hearing and actual hearing time is paid at \$40/hr. Travel to and from the hearing is paid at \$25/hr. Mileage, meals and lodging are paid at the State rate of reimbursement. All receipts for meals and lodging must be submitted with the request form. The form may be submitted to the Chairperson at the conclusion of the hearing or mailed to the MMLP office shortly thereafter.